Exhibit 15

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE:	§	
	§	**CASE NO. 11-13463-DWH**
MARITIME COMMUNICATIONS/ LAND MOBILE, LLC,	§	**CHAPTER 11**
Debtor.	§	

SKYTEL'S OBJECTION TO DISCLOSURE STATEMENT FOR MARITIME COMMUNICATIONS/LAND MOBILE, LLC

COME NOW Warren Havens, Skybridge Spectrum Foundation, Verde Systems LLC, Environmental LLC, Intelligent Transportation & Monitoring LLC, and Telesaurus Holdings GB LLC (collectively, "SkyTel")[1] and submit this *Objection* (the "Objection") to the *Disclosure Statement* (the "Disclosure Statement," Dkt. #424) filed by Maritime Communications/Land Mobile, LLC (the "Debtor") in connection with the Debtor's proposed *Plan of Reorganization* (the "Plan," Dkt. #425). In support of its Objection, SkyTel states as follows:

PRELIMINARY STATEMENT

1. The Disclosure Statement is woefully inadequate in numerous respects, and also describes a proposed Plan that is facially unconfirmable as a matter of law for a variety of reasons. Further, while there is some ambiguity as to this point, it appears that the Disclosure Statement and Plan may have been calculated to (i) deny SkyTel the right to meaningfully vote on the Plan, (ii) to deny SkyTel any distributions under the Plan, and (iii) to "launder" -- with the assistance of the Debtor's secured creditors and DIP lender (in which Donald DePriest owns an interest) -- the Debtor's assets so they are no longer subject to SkyTel's claims in and to them in connection with the pending FCC proceedings and the New Jersey litigation, all while purporting

[1] The SkyTel entities listed here are separate legal entities, all managed by Warren Havens, and for the purposes of this bankruptcy and in related proceedings before the Federal Communications Commission ("FCC"), pursue certain common interests.

to grant incredibly broad, non-consensual releases to the primary players involved in the apparent conspiracy, who are to operate with virtually no oversight by this Court or the creditors, and who, at the end of the day, appear to have the goal of walking away with Licenses that are worth much, much more than the amounts of their claims against the estate. Consequently, and for the many reasons discussed below (including but not limited to the fact that this Court has properly stated numerous times that it is going to let the FCC decide the issues regarding, among other things, who ultimately has what rights to the subject licenses), the Disclosure Statement should not be approved.[2]

BACKGROUND

2. On August 1, 2011 (the "Petition Date"), the Debtor commenced the above-captioned bankruptcy case (the "Bankruptcy Case") by filing a voluntary petition for relief under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

3. No trustee or examiner has been appointed, and the Debtor is operating its businesses and managing its property as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

4. SkyTel is a creditor and party-in-interest herein. *See e.g.* Claim No. 69; 11 U.S.C. § 1109.

5. On or around April 30, 2012, the Debtor filed the Disclosure Statement in connection with its proposed Plan.

[2] Actions by parties to this Plan who may be impermissibly acting in concert with the Debtor may be subject to SkyTel's antitrust claims in the New Jersey litigation discussed herein.

INTRODUCTION TO OBJECTION

6. Some of the objections made herein may also be made in an objection to confirmation of the Plan, and SkyTel has endeavored to identify those objections below. In this regard, a bankruptcy court may address confirmation issues at a hearing on the disclosure statement when the plan is so fatally and obviously flawed that it cannot be confirmed. *In re Bjolmes Realty Trust*, 134 B.R. 1000 (Bankr. D. Mass. 1991). Further, if a plan of reorganization described in a disclosure statement is unconfirmable as a matter of law, the court is authorized to deny approval of the disclosure statement. *In re Monroe Well Serv., Inc*., 80 B.R. 324, 332 (Bankr. E.D. Pa. 1987) (stating it may be appropriate to disapprove disclosure statement where a court is convinced that the plan could not possibly be confirmed); *In re Ginger Ella*, 148 B.R. 157 (Bankr. D.R.I. 1992); *In re Dakota Rail*, 104 B.R. 138, 143 (Bankr. D. Minn. 1989); *In re Pecht*, 57 B.R. 137, 139 (Bankr. E.D. Va. 1986); *In re Kehn Ranches, Inc*., 41 B.R. 832 (Bankr. D.S.D. 1984). "Allowing a facially nonconfirmable plan to accompany a disclosure statement is both inadequate disclosure and a misrepresentation." *In re Dakota Rail*, 104 B.R. at 143.

7. In the event this Court approves the Disclosure Statement (which it should not), SkyTel reserves all rights to object to confirmation of the Plan. Indeed, as set forth in its recent *Motion to Enforce Order and for Other Related Relief* (Dkt. #471), which was preliminarily heard by this Court on May 31, 2012, SkyTel needs the benefit of at least certain of the transcripts -- which were the subject of that motion -- in order to properly develop and support certain of its arguments in opposition to the Plan.

OBJECTION

A. The Disclosure Statement Should Not be Approved Because it Fails to Provide Adequate Information as Required by 11 U.S.C. § 1125.

8. Section 1125(b) of the Bankruptcy Code makes clear that before a debtor may solicit acceptance of a plan, the court must approve the written disclosure statement as containing adequate information. 11 U.S.C. § 1125(b). "Adequate information" is defined as:

> Information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan.

Id. at § 1125(a)(1).

9. "In determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." *Id.* While the court should review the information on a case by case basis, *see In re A.H. Robins, Co.*, 880 F.2d 694 (4th Cir. 1989), a proper disclosure statement -- in the end -- should be clear and succinct, and should, among other things, "clearly and succinctly inform the . . . creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution." *In re Joseph A. Ferretti*, 128 B.R. 16, 19 (Bankr. N.H. 1991).

10. The Debtor's Disclosure Statement does not, in numerous respects discussed in detail below, contain adequate information that would enable a hypothetical investor to make an informed judgment about the Plan. In addition, the Disclosure Statement is anything but clear, when considering the circumstances of this case or otherwise. Consequently, the Disclosure Statement should not be approved by this Court. Specifically --

11. The Disclosure Statement fails to provide adequate information regarding the events which led up to the Debtor initiating the Bankruptcy Case. The Disclosure Statement expends a sum total of two (2) very short paragraphs in describing those events (including vague references to certain litigation with SkyTel), and then states that "[f]urther information is available from the FCC and the court records for the United States District Court for the District of New Jersey." (Discl. Stmt., III.A., pp. 4-5).

It is *entirely* insufficient and inadequate for the Disclosure Statement to simply -- and vaguely – refer parties to the FCC and New Jersey District Court. This is especially so given the effect that the FCC proceedings (including but not limited to the pending Show Cause hearing for revocation/termination of the Licenses, which was brought against the Debtor by the FCC Enforcement Bureau, and *not* by SkyTel, as EB Dkt. No. 11-71) (the "Show Cause Hearing") and/or the New Jersey anti-trust litigation (Civil Action No. 2:11-cv-00993 in the United States District Court for the District of New Jersey) (the "New Jersey Litigation") may ultimately have on the Licenses discussed below and/or other claims asserted against the Debtor. In short, the Show Cause Hearing may result in a determination that the Debtor has no right to hold some or all of the Licenses, and in the termination (in the case of site-based Licenses) or revocation (in the case of geographic Licenses) thereof, and the New Jersey Litigation may result in substantial money damages against the Debtor as well as potential revocation of Licenses by the District Court under 47 U.S.C. § 313. Absent a much more detailed description of these and other events leading to bankruptcy, creditors and parties in interest cannot make an informed judgment with respect to the Plan.

12. The Disclosure Statement also fails to provide adequate information regarding the valuation of the Debtor's primary alleged assets -- specifically, the Debtor's alleged rights in

connection with the geographic and site-based FCC licenses and related radio spectrum (hereinafter collectively referred to as the "Licenses") which are at issue in the Bankruptcy Case. On the one hand, the Disclosure Statement directs parties to the Debtor's Schedules, which are attached as Exhibit A to the Disclosure Statement, for the asserted value of the Licenses. (*See* Discl. Stmt., III.B, p. 5). Those Schedules, however, assert that the value of the Licenses is $45,200,000.00 *based specifically on a June 2008 appraisal* (i.e., the "Bond & Pecaro Appraisal") *which the Debtor*, in hearings which have occurred before this Court, but to which many creditors and parties-in-interest are not privy, *has sought to discredit*, in part because of the time that has passed since that appraisal was completed.[3] (*Id*., Exh. A, p. 5).

On the other hand, the Disclosure Statement asserts, contradictorily, that the value attributed in the Schedules to the Licenses is simply an "estimated current market value [of the subject assets] in Debtor's opinion" (*See id*., III.B, p. 5.) These contradictory statements and positions are confusing at best, and fail the test of providing adequate information that would enable a hypothetical investor to make an informed judgment about the Plan. While the Court may approve a disclosure statement without an appraisal of the Debtor's assets, in some cases a valuation or appraisal may be necessary in order to develop adequate information. *See e.g. In re Radco Properties, Inc*., 402 B.R. 666, 682-83 (Bankr. E.D.N.C. March 9, 2009) (appraisals necessary to provide adequate information with respect to establishing value of debtor's properties beyond liquidation value).[4]

[3] SkyTel has ordered, but has not yet received for reasons the Court is aware, the subject transcript(s) which include this testimony.

[4] In this regard, at the last sale motion hearing, the Court took written and oral testimony from an expert professional appraiser of FCC licenses, Charles Walters, commissioned by SkyTel, as to the appraised fair market value of the Licenses subject to certain asset purchase agreements. This expert demonstrated that the sales prices of the subject licenses in the those agreement (but for a few exceptions: smaller transactions) were grossly under fair market value, by a multiple, and that if the claims against the Licenses being pursued by the FCC itself (not only by SkyTel) were overcome, the Licenses would be

Because the Licenses are the Debtor's primary alleged assets, and because, as discussed in more detail below, the Debtor's Plan involves the proposed transfer of the Licenses to another entity (subject to final FCC approval) for marketing and sale by that entity (after receipt of final FCC approval to do that) -- i.e., the success of the Plan and the potential return to creditors hinges in large part on what the Licenses are worth and might sell for in the event the FCC ultimately removes or clears the "clouds" on the Licenses[5] and approves such transfers/sales moving forward -- a current expert fair market appraisal of the Licenses in that cleared condition is necessary in this instance in order to satisfy the adequate information requirement. Absent such an appraisal, creditors and parties in interest cannot make an informed judgment with respect to the Plan.

13. The Disclosure Statement also fails to provide adequate information regarding the valuation of certain other of Debtor's assets. Specifically, the Disclosure Statement directs parties to the Debtor's Schedules for the asserted value of the Debtor's "machinery, fixtures, equipment, and supplies" used in its business, and indicates that that asserted value is an "estimated current market value [of the subject assets] in Debtor's opinion." (*See* Discl. Stmt. III.B, p. 5). The Schedules, when initially filed, valued that property at $1,350,000.00, but, as amended, value that property at $21,406.80. (*Id*., Exh. A, p. 5). This huge discrepancy in the

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worth a multiple higher -- both the licenses in those sales, and the rest of the Debtor's alleged Licenses. This expert also showed that even using the valuation shown by those sales results in a valuation rate, and resultant valuation, far higher than in the Bond & Pecaro Appraisal. The Debtor could have, but did not, at that hearing or thereafter obtain and present any expert appraisal, by a qualified professional appraiser, of any of its Licenses.

[5] The "clouds" include but are not limited to license revocation and termination. In addition, if the "clouds" are removed, the FCC may impose conditions including that the Debtor first pay to the FCC the auction-acquisition shortfalls, and fines due to the Debtor's rule violations, that the FCC is pursuing in the Show Cause Hearing as described in the hearing designation order, FCC 11-64.

Debtor's "opinion" as to the value of this property should be explained, and an appraisal should be required absent an adequate explanation.[6]

14. The Disclosure Statement also fails to provide adequate information regarding (i) certain boxes of documents (the "Boxed Documents") which are in the possession, custody, or control of Nation's Capital Archives Storage Systems ("NCASS") and which are the subject of a recent motion filed by SkyTel herein for the purpose of, *inter alia*, preserving those documents for the benefit of the estate (the "Preservation Motion," Dkt. #469), and (ii) the potential impact that the information contained in those documents might have on the makeup of the Debtor's assets.

As discussed in detail in the Preservation Motion and the exhibits thereto, all of which are hereby incorporated herein by reference, the approximately 93 boxes of Boxed Documents directly relate to certain of the Debtor's alleged assets -- specifically, the site-based Licenses that the Debtor allegedly purchased from Mobex Network Services, LLC ("Mobex") in or around 2005 -- and contain information highly relevant to, among other things, the issue of whether or not Mobex timely constructed and properly operated the site-based Licenses prior to the sale of its alleged assets to the Debtor.

Significantly, if Mobex did not do so in connection with some or all of the site-based Licenses, then the subject licenses purportedly sold to the Debtor automatically terminated by operation of law prior to the sale, and are not valid assets of the estate. In the case of such a finding, the Debtor may have valuable claims to assert against Mobex, as the seller of the

[6] In this regard, it should be noted that the Debtor has stated, in discovery responses in the FCC Show Cause Hearing, that it has not visited the Licenses' station/sites, or at least the majority of them, for a long time (some, for years), and thus does not have knowledge of the status of those stations/sites. The Debtor also stated that the stations/sites have not been in operation for some time, many for a number of years. The Debtors' alleged non-License assets appear to primarily be comprised of these alleged license-station equipment assets that it currently lacks information on and control over. The Debtor does not disclose how it may pay for the cost to remove, ship, and extract value from this equipment.

licenses, for, among other possible things, breach of representations and warranties, fraud, rescission, and other remedies and associated damages that would benefit the estate.

Further, based on information and believe, the Boxed Documents also relate to a claim that was asserted by the Debtor, denied by the FCC, and currently subject to an appeal by the Debtor before the FCC,[7] for a refund of $1,301,230.00 that the Debtor seeks for alleged past payments made by, but that allegedly did not have to be made by, its predecessor holder of the subject site-based Licenses, Mobex, as a CMRS ("Commercial Mobile Radio Service") operator of the subject licenses (the Debtor has alleged, *inter alia*, that these payments did not have to be made by Mobex because the business was actually conducted as a PMRS ("Private Mobile Radio Service")). If the Boxed Documents demonstrate that the refund claim lacked a valid basis, then the Debtor's potential claims against Mobex, discussed above, may increase to the benefit of the estate.[8]

While the Debtor has represented to the FCC and others that the Boxed Documents relate to the site-based Licenses it allegedly purchased from Mobex, the Debtor has also represented (i) that it had no interest in retaining those Boxed Documents following the subject purchase, and (ii) that it (and Mobex) believed those Boxed Documents had been destroyed due to Mobex's failure to pay outstanding storage fees.[9] The purported belief of the Debtor and Mobex in this

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[7] This proceeding is described in: *In the Matter of ... Request for Review by Waterway Communication System, LLC and Mobex Network Services, LLC of a Decision of the Universal Service Administrator*, DA 10-1013, 25 FCC Rcd 7170; 2010 FCC LEXIS 3404; released June 4, 2010. *See also* FCC DA 08-1971, in which the refund amount sought is stated: $1,301,230.00. A copy in FCC records is at: http://www.universalservice.org/_res/documents/about/pdf/fcc-orders/2008-fcc-orders/DA-08-1971.pdf.

[8] The Debtor's purchase of the site-based Licenses from Mobex included all related assets, including this refund claim. This is reflected in various FCC documents, including footnote one of the FCC Order, DA 08-1971, the link to which is set forth in the preceding footnote.

[9] *See e.g.*, Declaration of David Predmore (who was, along with John Reardon, a Mobex Officer), at ¶ 5, a copy of which is attached to the Preservation Motion as Exhibit A; *see also* Debtor's Opposition to Petition to Dismiss in FCC proceeding, at p. 3, and copy of which is attached to the Preservation Motion (without exhibits) as Exhibit B.

latter regard apparently continued until SkyTel was successful very recently in locating the Boxed Documents at NCASS.[10]

This Court heard the Preservation Motion on May 31, 2012, and ruled, *inter alia*, that the Boxed Documents should be preserved by bonded copier until a privilege/confidentiality review process can be established by this Court upon, for example, an amended motion to be filed by SkyTel post-preservation.

Absent proper and adequate disclosure of the Boxed Documents, the potential impact they may have on the Debtor's assets, and the related issues, creditors and parties in interest cannot make an informed judgment with respect to the Plan.

15. The Disclosure Statement also fails to provide adequate information regarding the Debtor's very recent, and voluntary, decision to turn back in a significant and valuable amount of its site-based Licenses, including component station authorizations, to the FCC for permanent cancellation (including by deletion of stations), pursuant to a "Limited Joint Stipulation" entered into with the FCC Enforcement Bureau, a copy of which is attached hereto as **Exhibit A**.[11] As shown, these include licenses in a large percentage of major and other important markets in the nation. These site-based licenses constitute a large part of the Debtor's total licenses, measured on a MHz Pops or MHz square miles basis, and the Debtor has represented all along that all of its Licenses, included these, are both valid and valuable. Essentially, the Debtor has apparently

[10] *See* Exhibit F to the Preservation Motion.

[11] None of these site-based Licenses have rights that are subsumed in full under the co-channel (same frequency) geographic license for the surrounding area that the Debtor alleges to validly hold. For one thing, the geographic licenses are subject to revocation in the ongoing FCC Show Cause Hearing, as described in the Hearing Designation Order, for violation of FCC auction and related rules (and for misrepresentation and lack of candor), but these site-based Licenses are subject in that hearing to "automatic termination" for lack of timely and proper construction and operations. If a geographic license in an area is revoked, the co-channel site-based license may not be adversely affected if it were valid and had been maintained and not cancelled. Indeed, the Debtor previously asserted that before the FCC and in its marketing of the site-based along with the geographic licenses.

entered a binding stipulation with the FCC Enforcement Bureau to abandon these assets unilaterally (with no consideration received in exchange from the FCC), and without notice to creditors or authorization from this Court. Absent a sufficient disclosure and explanation of these actions by the Debtor, creditors and parties in interest cannot make an informed judgment with respect to the Plan.

In this regard, as with other actions described above, this licenses-cancellation action also implies, but more directly and immediately, a valuable damage claim by the Debtor against the seller of these licenses now being cancelled. If these licenses, purchased from Mobex, were valid and thus valuable assets, they would have been maintained and not turned in for cancellation. Since they are now turned in for cancellation, Debtor apparently found new information[12], or came to belatedly recollect information, that shows that these licenses Mobex sold to the Debtor were invalid, contrary to the representations and warranties in any legitimate asset purchase of this kind, including this sale (if this sale was legitimate).[13] In sum, Debtor has asserted these were valid and valuable licenses, and turning them in for cancellation cannot be squared unless Debtor now has and asserts a damage claim against Mobex and persons culpable. In this regard, John Reardon was CEO of Mobex before and after this sale, and upon this sale or at about that time, he became the CEO of the Debtor.

16. Next, the Disclosure Statement fails to provide adequate information regarding the Debtor's income and cash on hand, including but not necessarily limited to income related to the revenue stream generated from the Debtor's leasing of the Licenses. It is clear from hearings

[12] Possibly, its back up records of the records in the Boxed Documents subject to the Preservation Order described above. The cancellations were virtually concurrent with SkyTel's informing the FCC and the Debtor that it located these Boxes.

[13] SkyTel has a pending challenge before the FCC on this issue: that the sale was not legitimate, including since the licenses were not valid when sold and assigned, among other reasons. This challenge is independent of the FCC Show Cause Hearing now taking place on the Debtor and its alleged Licenses.

which have occurred before this Court, but to which many creditors and parties-in-interest are not privy, that the Debtor has been generating revenue, and expects to generate more revenue, in connection with the Licenses.[14] And yet the Disclosure Statement simply states that "[t]he Debtor is currently receiving limited revenue from operations" and that "[a]ccording to the Debtor's monthly operating report . . . the Debtor had a cash balance of approximately $9,099.96" *as of January 30, 2012* – i.e., *three (3) months* before the Disclosure Statement was filed. (*See* Discl. Stmt., III.B., p. 5).[15] Absent more detailed and specific information regarding the Debtor's current and expected income and cash on hand, and plans to obtain future income, creditors and parties in interest cannot make an informed judgment with respect to the Plan.

17. Further, the Disclosure Statement fails to provide adequate information regarding the Debtor's receivables. The Disclosure Statement states that the receivables total $979,270.15 as of January 31, 2012, and directs the parties to the Schedules for more information. (*See* Discl. Stmt. III.B., p. 5). The Schedules provide that the "stated value" of the receivables consists primarily of a judgment against Central Communications Network ("CCN") of $978,20.41 (presumably excluding interest on the judgment). However, it is clear from hearings which have occurred before this Court, but to which many creditors and parties-in-interest are not privy, that the purported CCN receivable is essentially uncollectable (or, at a minimum, that the Debtor has failed in any and all efforts made to collect on it). Absent more detailed and specific information

[14] SkyTel has ordered, but has not yet received for reasons the Court is aware, the subject transcript(s) which include this testimony.

[15] In this regard, the Debtor has had and apparently still has an agreement with NRTC (National Rural Telecommunications Cooperative) that has taken various forms, but by which the Debtor obtained certain rights to NRTC 220 MHz licenses that are nearly adjacent, in spectrum range, to the Debtor's AMTS Licenses and that may be used for essentially the same purposes as the AMTS Licenses. There are not FCC "clouds" over these NRTC 220 MHz licenses, and thus these Debtor rights appear valuable and a means to have generated, and to now generate, substantial income and profit. If Debtor has abandoned these rights, that should be disclosed.

regarding the CCN receivable, creditors and parties in interest cannot make an informed judgment with respect to the Plan.

18. The Disclosure Statement also fails to provide adequate information regarding the Debtor's DIP Financing liabilities. The Disclosure Statement asserts, in connection with the Debtor's DIP Financing, that the "DIP Loans are secured by a first priority lien upon the revenues and proceeds of the Debtor's FCC Spectrum Licenses." (Discl. Stmt., III.C.5, p. 6). However, the Orders authorizing the Debtor to incur the subject DIP financing contain caveats that are not set forth in, but that should be set forth in, the Disclosure Statement. For example, the DIP Loans are only secured by a lien on the revenues and proceeds of the Licenses *if* the Debtor is ultimately determined to have the right to hold the Licenses. *See e.g.* Dkt. # 285, at ¶ 24. Further, the Orders expressly provide that they shall not be deemed to be an adjudication that the Debtor owns the FCC Licenses, and that SkyTel reserves and maintains the right to continue to assert, *inter alia*, (i) that the Debtor does not own the Licenses, and (ii) that the Debtor cannot, in light of its lack of ownership of the Licenses or otherwise, properly grant, and has not properly granted, any valid security interests and/or liens in connection with the Licenses or proceeds thereof. *See e.g. id.*, at ¶ 26. This information should be disclosed in order for the creditors and parties in interest to make an informed judgment with respect to the Plan.[16]

19. The Disclosure Statement provides wholly inadequate information regarding the Debtor's alleged secured claim liabilities. Indeed, the Disclosure Statement simply states, as to each alleged secured creditor, their name, the alleged collateral for their alleged debt, and the value of their alleged claim (often based on the amount of the proofs of claim filed in the Bankruptcy Case). (Discl. Stmt., III.C.6, pp. 6-7). The Disclosure Statement does not contain

[16] On a related note, the Disclosure Statement also fails to disclose that Donald DePriest owns a 10% interest in the DIP Lender. Given his relationship with and past/present role in the Debtor, this information should have been provided.

any information whatsoever as to how these debts were incurred, why these debts were incurred, or who may have guaranteed the debts[17], and has very limited information regarding the two LLCs and National Rural Telecommunications Cooperative ("NRTC") (the latter of which is not expressly listed in the Disclosure Statement, but is in the Amended Schedule D exhibited thereto). All of this information should be provided in detail in order for the creditors and parties in interest to make an informed judgment with respect to the Plan.

20. The Disclosure Statement also provides wholly inadequate information regarding the Debtor's unsecured claim liabilities. First, the Disclosure Statement asserts that SkyTel "has filed an unsecured claim in the amount of $100,000,000.00" (this is patently incorrect -- see SkyTel's proof of claim attached hereto as **Exhibit B**), and provides no information whatsoever about the bases for SkyTel's claim.[18] (Discl. Stmt., III.C.7, p. 7). Such information should be provided in detail, absent which creditors and parties in interest cannot make an informed judgment with respect to the Plan.

Second, the Disclosure Statement asserts that the FCC "has filed an unsecured claim in the amount of $6,315,635.65," but provides no information about the basis for that claim, as it should. (*Id*.).

Third, the Disclosure Statement provides, in connection with the "other" unsecured claims purportedly totaling $16,124,666.42, that "many of those claims are contested and will otherwise be waived in accordance herewith." However, the Disclosure Statement does not provide any information regarding which of those claims will be contested and why, and gives no explanation of the assertion that many of those claims will "be waived in accordance

[17] For example, Donald DePriest appears to have provided guarantees in connection with most, if not all, of the alleged secured debt, but this has not been disclosed, and no details in that regard have been discussed.

[18] Or that SkyTel's Sherman Act 1 claim, if SkyTel prevails, may result in triple damages.

herewith." Absent this information, and a detailed explanation, creditors and parties in interest cannot make an informed judgment with respect to the Plan.

21. The Disclosure Statement also fails to provide adequate information regarding the progress of the Bankruptcy Case. Instead, rather than provide any meaningful, detailed information on that point, the Disclosure Statement essentially points the parties to a copy of the Bankruptcy Case docket. (See Discl. Stmt., IV, p. 7). Without a more detailed description of the case progress, including but not necessarily limited to the pending appeals and the motion and related order lifting the stay so that the New Jersey Litigation brought against the Debtor and certain Mobex entities can proceed, creditors and parties in interest cannot make an informed judgment with respect to the Plan.

22. The Disclosure Statement and the Plan it describes also fail to provide adequate information as to which entity the Debtor proposes to transfer the Licenses, subject to final FCC approval. Rather, the information provided is ambiguous and confusing at best. For example, the Disclosure Statement states that the Licenses would be transferred to Choctaw Holding, LLC ("Holding"), which is an entity with respect to which Choctaw Telecommunications, LLC ("Choctaw") is the sole member. (*See* Discl. Stmt., VI.C., p. 11). The Plan, on the other hand, has inconsistent provisions about whether Holding or Choctaw would be the transferee. (Cf. Plan II.B.1 (Holding is transferee) with Plan II.D.1 (Choctaw is transferee), and Plan III.G.1 (Holding is transferee)). This information should be clarified by the Debtor.[19]

23. The Disclosure Statement also fails to provide adequate information regarding various entities (most particularly, Choctaw and Holding) proposed to assume essential roles in the continuance of the Debtor's operations post-confirmation and consummation of the proposed

[19] In addition, there is no demonstration or even assertion that this potential transferee meets various FCC requirements to become a licensee, or to receive licenses that will be subject to certain FCC imposed "unjust enrichment" payments, if the transferee does not become qualified as a certain "small company."

Plan. Who are they? Who all is involved? What connections, if any, do they have with the Debtor and its principals/members/managers? What connections, if any, do they have with the secured creditors or any other creditors of the Debtor?[20]

Relatedly, the Disclosure Statement fails to provide adequate information regarding Patrick Trammel -- who is the President of the Debtor's DIP Lender in which Donald DePriest, who has acted in a management role for Debtor, owns a 10% interest -- and his involvement with Choctaw, Choctaw Investors, Holding, the Debtor, the Debtor's principals/members/managers, and the Debtor's creditors. Absent such information being provided in detail, the creditors and parties in interest cannot make an informed judgment with respect to the Plan.

24. Similarly, the Disclosure Statement fails to provide adequate information regarding the Administrative Agent, who is also proposed to assume an essential role post-confirmation and consummation of the proposed Plan. Indeed, the Administrative Agent is, among other things discussed in the Disclosure Statement and Plan, "that person or entity appointed by the Committee to receive and distribute payments for and on behalf of the general unsecured creditors and to enforce the unsecured creditors' rights herein." (Plan, I, p. 2). Further, the Administrative Agent is to serve without a bond, and is to have numerous, broad and exclusive proposed powers, purportedly to be exercised in many instances without Court oversight or notice to creditors. (*See e.g.* Discl. Stmt., VI.D.5, pp. 15-16). In light of the above, the creditors and parties in interest are entitled to significantly more information regarding the Administrative Agent in order to make an informed decision on the Plan. For example, who will it be, or, at a minimum, who are the candidates? What connections, if any, will the agent have

[20] This may involve obtaining FCC approval to the degree this entity has a certain level of de facto control as to any or all of the Debtor Licenses or the licensee affairs.

with the Debtor and its principals/members/managers? What connections, if any, will the agent have with the creditors of the Debtor?

25. The Disclosure Statement also fails to provide adequate information regarding the Administrative Agent's proposed compensation. The Disclosure Statement provides that "the compensation of the Administrative Agent shall be agreed upon by the Committee and Administrative Agent on or before ten (10) days prior to the confirmation hearing and disclosed to [this Court] on or before the confirmation hearing." (Discl. Stmt., VI.D.5, p. 17). This is inappropriate. The proposed compensation and the details thereof should be disclosed now, or, at a minimum, sufficiently in advance of the Plan voting and objection deadlines so as to enable creditors and parties in interest to make an informed decision with respect to the Plan and whether or not to vote in support of it.

26. The Disclosure Statement and the Plan it describes are impermissibly ambiguous regarding the identity of Choctaw Investors. The Plan defines Choctaw Investors to be made up of Trammel and the Debtor's secured creditors. (Plan, I, p. 3). Yet the Disclosure Statement, in connection with its discussion of the proposed treatment of secured claims, at least suggests that secured creditor Dupree is not a part of Choctaw Investors. (*See* Discl. Stmt., VI.C.1, p. 12). This should be clarified. Further, based on information and belief, NRTC is an alleged secured creditor but is not part of Choctaw Investors. This should be clarified as well.

27. The Disclosure Statement also fails to provide adequate information regarding the feasibility of the proposed Plan that it describes. Rather, in support of feasibility, the Disclosure Statement states simply that (i) the Debtor "believes" that "Choctaw will be able to timely perform all of its obligations described in the Plan," and (ii) consummation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtor

"[b]ecause the Plan is a plan of reorganization and the Debtor will wind down its business upon confirmation." (Discl. Stmt., V.A, p. 7).

Statement (i) is gravely insufficient. Indeed, the Debtor's "belief" that Choctaw will be able to timely perform all of its proposed obligations is not enough. The Disclosure Statement should, as an initial matter, explain in greater detail what those obligations are. The Disclosure Statement also needs to provide a sufficient basis for the Debtor's "belief" by, for example, explaining (a) why Choctaw is qualified to take on those obligations, (b) Choctaw's financial ability to perform those obligations, (c) how long it will take for Choctaw to perform those obligations, (d) what it will cost, and (e) why Choctaw will be able to perform those obligations (including but not limited to marketing the Licenses for maximum return) better and more efficiently than the Debtor or, for example, a Chapter 11 Trustee/Liquidating Trustee, especially considering the complexity and uniqueness of the assets at issue, and the fact that marketing and selling those assets appear to virtually be the sole means of funding the proposed Plan. Indeed, it appears that the key to the unsecured creditors getting paid under the proposed Plan is, in addition to FCC approval, the success of Choctaw, so it is essential that the Disclosure Statement provide more detailed information on the above topics. Without disclosure of this information, creditors and parties in interest cannot make an informed judgment with respect to the Plan.

Relatedly, the Disclosure Statement should also provide much greater detail about the feasibility of liquidating the Licenses in the manner contemplated by the Plan. For example, the Disclosure Statement should describe the steps needed to effectuate any License sales, including but not limited to the steps necessary to secure the required FCC approval. In this latter regard, the ultimate feasibility of the proposed Plan hinges on the Debtor, for example, either prevailing on the merits in the pending FCC Show Cause License revocation/termination proceeding, or

obtaining relief pursuant to the very limited *Second Thursday* doctrine.[21] Accordingly, the Disclosure Statement should include a detailed discussion of how the Debtor intends to attempt to do this[22], to include informing creditors of the known criteria for *Second Thursday* relief petitions or applications (including under the FCC judge's and prosecutors' interpretation thereof, in the Show Cause Hearing) and why the Debtor believes its application will be successful, and informing creditors about the consequences that would follow if a *Second Thursday* application is denied by the FCC and the Debtor loses on the merits as well. Absent such disclosure of information, creditors and parties in interest cannot make an informed judgment with respect to the Plan.

The Disclosure Statement should also provide information regarding SkyTel's Application for Review which is pending before the FCC (at the full Commission level, with associated petitions based on new facts at the Wireless Bureau level), claiming the rights to all of the Debtor's geographic licenses. These claims are not within the FCC Show Cause Hearing taking place under EB Dkt. #11-71. And significantly, regardless of the resolution of the Show Cause Hearing, and even if the Debtor were to obtain some form of relief under the so-called *Second Thursday* doctrine (and if that stands up to administrative and court challenges that may be brought by SkyTel or others), this SkyTel Application for Review may result in these geographic licenses being awarded to SkyTel in full or part.[23] This should be disclosed to the creditors and parties in interest, and also goes to ultimately feasibility of the proposed Plan.

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[21] But see the discussion of SkyTel's pending Application for Review, *infra*.

[22] Particularly in light of the fact that, so far, both the Judge handling the FCC proceedings, and the FCC prosecutors, have indicated on the record in hearings that they do not think the proposed Plan, as it was outlined by Debtor's counsel at the hearings (or any alternative plan, due to the total value of the licenses that is apparent and other reasons, which the FCC asserted it will ultimately determine), can satisfy the *Second Thursday doctrine* purpose and criteria.

[23] Among other reasons, any *Second Thursday* relief applies to a license revocation hearing. SkyTel's claim to the licenses is based, to commence with, on the licenses as issued to the Debtor being void *ab initio*. If that claim is sustained, then there are no licenses to revoke and *Second Thursday* cannot apply.

Further, statement (ii) is completely misleading. First, it is not accurate to describe the Plan as a plan of reorganization. Rather, it is in fact a liquidation plan, in substance. Indeed, the Disclosure Statement asserts that the Plan is intended to "efficiently and quickly liquidate Debtor's assets… .," and further asserts that "the Debtor will wind down its business upon confirmation" of the Plan. (*See* Discl. Stmt., IV and V.A). Second, the Disclosure Statement and the Plan it describes provide – subject to clarification of the transferee ambiguity discussed above -- that the Licenses are to be transferred to Holding initially. However, if Choctaw is unsuccessful in marketing the Licenses and/or decides against pursuing approval of the further transfer of the Licenses, the Licenses are to revert back to the estate subject to the secured creditors' asserted liens. (*See e.g.* Plan, III.D.3). If this happens, it is completely unclear from the Disclosure Statement and the Plan it describes whether and how the estate will then fund the continuance of the FCC proceedings and/or further marketing of the Licenses. Accordingly, it is not at all clear that that consummation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtor.

28. Similar to the above, the Disclosure Statement fails to provide adequate information regarding the consequences if Choctaw/Holding decides to forego seeking approval of the ultimate transfer of the Licenses. While it is ambiguous in several respects, the Disclosure Statement provides that the Licenses are to be transferred to Holding subject to final FCC approval. If that approval is denied, the Licenses shall remain the property of the Debtor. Then, if the FCC finally approves Holding as the owner/holder of the Licenses, Choctaw is to market and sell the Licenses in its sole and absolute discretion. (*See e.g.* Discl. Stmt. IV.C.1, p. 11, and VII.D.2, p. 20). But, if Choctaw or Holding decides, in their sole and absolute discretion, that obtaining FCC approval of the transfer or further transfer of the Licenses is cost prohibitive,

and/or are unsuccessful in marketing and selling the Licenses, Choctaw or Holding are, at their sole discretion, to surrender or otherwise abandon the Licenses to the Debtor, subject to the secured creditors' and DIP lender's asserted liens in the Licenses' proceeds. (*See e.g.* Discl. Stmt., VII.D.3, p. 20; Plan, III.D.3).[24]

What is not expressly or very clearly disclosed or discussed, however, are the consequences to SkyTel of this scenario. Specifically, what happens to SkyTel's claims in, to, and in connection with the Licenses (in both the FCC and New Jersey Litigation[25]), and otherwise, and all related encumbrances created thereby? If the FCC denies the transfer of Licenses to Holding in the first instance, such that the Licenses remain property of the Debtor, are SkyTel's claims preserved under the Plan (setting aside for the moment whether or not any such FCC-claim preservation can be lawfully affected by Debtors actions under any plan), or are the Licenses somehow free and clear of them? SkyTel cannot tell from a reading of this Disclosure Statement because it is ambiguous in this regard, and can arguably be read both ways depending on what provisions are reviewed.

The Disclosure Statement should be clarified to make it 100% clear that SkyTel's claims to and in connection with the Licenses directly before the FCC, and otherwise (e.g., SkyTel's New Jersey Litigation damages claims), are preserved, and not adversely impacted or somehow wiped out or released or discharged by the proposed Plan or any Order confirming same. Indeed, that would be consistent with this Court's order lifting the stay to allow the New Jersey

[24] Initially, the Debtor does not explain how these variable and complex actions, that depend ultimately on obtaining *Second Thursday* relief from the FCC in what is otherwise a license revocation situation and proceeding, may succeed under the *Second Thursday* case precedents that do not involve such machinations.

[25] While the New Jersey Litigation primarily seeks money damages under the Sherman Act, one possible remedy in the event SkyTel prevails therein is the District Court revoking some or all of the Licenses and, with FCC approval, assigning them to SkyTel. Indeed, United States District Courts have the power to revoke FCC licenses of a licensee found to have violated federal anti-trust law, including the Sherman Act. *See* 47 U.S.C. § 313.

Litigation to proceed, and would also be consistent with what this Court has made clear throughout the course of the Bankruptcy Case.[26] For example, in the Orders that have been entered in connection with the approved sale motions and the DIP financing, the Court has made it clear that it is not attempting to superimpose it rulings or judgments on the FCC, that its rulings are contingent on what the FCC ultimately decides vis-à-vis the Licenses, that the FCC could ultimately reach a decision that eviscerates the Debtor's ownership of and/or right to hold the Licenses, that the parties, including SkyTel, have not waived or otherwise conceded any claim, defenses, or rights that they may elect to assert before the FCC or any court of competent jurisdiction, and that SkyTel's rights are reserved and maintained so that it may continue to assert that the Debtor does not own or have the right to hold the Licenses, and may continue to assert the claims and positions which are the subject of the New Jersey Litigation and FCC proceedings. *See e.g*. Dkt. #s 374, 375, 376.

Despite the foregoing, and as alluded to above, the Disclosure Statement and the Plan it describes can arguably be read -- though it is not 100% clear -- to describe a process by which SkyTel's claims in, to, and in connection with the Licenses, and otherwise, and all related encumbrances created thereby, are "laundered" through the proposed Plan and disappear for good, even if the FCC does not ultimately grant *Second Thursday* relief or approve the transfer of those Licenses to Choctaw, and if those Licenses ultimately revert back to the Debtor at the end of the day such that we are right back to where we started.

The Disclosure Statement needs to be clarified to make it clear that this is not the case, and that SkyTel's claims to and rights in the Licenses, and claims asserted in the New Jersey Litigation, remain as a matter of law in place unless and until the FCC and New Jersey District

[26] It would also be consistent with FCC treatment of all of the SkyTel claims to the Licenses, and challenges to the Debtor's claims to the Licenses -- indeed, all of the proceedings with respect to these claims and challenges are continuing and are not subject to the automatic stay.

Court decide otherwise, absent which the Disclosure Statement should not be approved and the related Plan should not be confirmed.

29. The Disclosure Statement also fails to provide adequate information regarding whether or not the proposed Plan that it describes meets the Best Interest of Creditors Test codified at 11 U.S.C. § 1129(a)(7), which provides that, in order for a Plan to be confirmed, each holder of a claim in each impaired class of claims must either (i) accept the plan, or (ii) receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain in a straight liquidation.

The Disclosure Statement simply states that the Debtor "believes" that the Plan meets the test because (i) "the Plan proposes to pay all allowed claims in full," and (ii) "it is 'doubtful' that a Chapter 7 trustee would be able to liquidate the FCC Spectrum Licenses in such a manner and at such a price as to pay all allowed claims in full" because of the "highly specialized nature" of those licenses. (Discl. Stmt., V.C, p. 8). Statement (i) is completely inaccurate, misleading, and inadequate, given that whether or not the Plan actually proposes to pay all allowed claims in full is completely dependent on whether and for how much the Licenses can ultimately be sold and on whether the FCC ultimately approves such sales to move forward in the face of the pending FCC proceedings. Statement (ii) is also inadequate. Rather, the Disclosure Statement should provide a detailed liquidation analysis (to include information regarding how much creditors would receive in a Chapter 7 liquidation) and a discussion of why Choctaw will be able to market and sale the Licenses for a higher amount than a Chapter 7 trustee.

30. The Disclosure Statement fails to provide adequate information regarding claims estimation and objections, and their potential effect on the timing and amounts of any estimated

recovery by creditors as opposed to the timing and amounts of any actual recovery that may ultimately be realized under the proposed Plan. Rather, the Disclosure Statement simply states that the subject time and amounts will "[d]epend[] on the outcome of claims objections," without providing any details on the pending and anticipated objections and the process for addressing same. (Discl. Stmt., V.G, p. 8). Such details should be provided so that the creditors and parties in interest can make an informed judgment with respect to the Plan.

31. Regarding claims estimation and the proposed treatment of contingent/contested claims for purposes of, *inter alia*, voting on the Plan, the Disclosure Statement provides information that is both confusing and ambiguous, and entirely inadequate under §1125 of the Bankruptcy Code.

The Disclosure Statement provides, in connection with treatment of contingent claims: (i) that such claims, until such time as they become fixed and allowed, shall be treated as contested for purposes of *voting*, allowances, and distributions under the Plan, and (ii) that this Court, *upon request of the Debtor*, shall by estimation in a summary proceeding determine the allowability of such claims for purposes of *voting* on the Plan. (Discl. Stmt., VII.E., p. 21). Based on this provision, the Debtor is the only party who can ever request estimation of a contingent claim such as SkyTel's claim, absent which SkyTel is *denied the right to vote* on the Plan, and is also *denied the right to any distributions* under the Plan. This is highly improper, and should not be approved by the Court in connection with either the Disclosure Statement or confirmation.

The Disclosure Statement later provides -- and here is where the confusion and ambiguity arises -- that, in connection with contested claims (which SkyTel's is under this Disclosure Statement and Plan): (i) such claims are not entitled to vote on the Plan, but (ii) "[i]f you are the holder of a contested claim, you may ask the Bankruptcy Court pursuant to Bankruptcy Rule

3018 to have your claim temporarily allowed for the purposes of voting." (Discl. Stmt., VIII.E., p. 27). Prongs (i) and (ii) are inconsistent, and this entire provision, when read together with the preceding provision discussed above, creates ambiguity within the Disclosure Statement regarding if and how a creditor holding a contingent or contested claim gets to vote. Further, the Disclosure Statement does not discuss, in connection with the Rule 3018 procedure, how the amount of SkyTel's claim would be set for purposes of voting. That information is significant, and should be provided, given its potential impact on whether the proposed Plan can be confirmed over SkyTel's objection.[27] In any event, the Disclosure Statement should not be approved to the extent it purports to operate to, or have the effect of, impairing the legal or equitable rights of SkyTel to a vote on the Plan.

Not only are the aforementioned provisions of the Disclosure Statement confusing and ambiguous, and the information provided in connection therewith entirely inadequate under §1125, they are also inconsistent with (i) the Court's prior Order lifting the automatic stay to allow the New Jersey Litigation to proceed so that the District Court could liquidate the amount of that portion of SkyTel's claim herein, and (ii) the Debtor's previous representation to the Court, made at the hearing on SkyTel's motion to lift that stay, that the Debtor does not intend to unnecessarily rush or force the process.

32. The Disclosure Statement fails to provide adequate information regarding the proposed effective date of the Plan it describes. The Disclosure Statement first states that "[t]he effective date of the Plan will be the first business day of the calendar month following the confirmation of the Plan, if all payments to and by Choctaw that are due on or before the effective date shall have been made, and all contingencies shall have been met or waived."

[27] SkyTel will be filing a Rule 3018 motion out of abundance of caution, and without waiving its objections set forth herein or to be set forth at the Disclosure Statement hearing or otherwise.

(Discl. Stmt., VI.A.2, p. 10). The Disclosure Statement should provide clearer and more detailed information on those payments and contingencies, such that creditors and parties in interest are able to determine when the proposed Plan will become effective if it is confirmed.

The Disclosure Statement also describes certain specific "conditions precedent to the occurrence of the effective date." (*Id*., VII.B, p. 19). The Disclosure Statement later states that "[e]ach of the conditions set forth *in the Plan* may be waived in whole or in part by the Debtor, without any other notice to parties in interest of the Bankruptcy Court and without a hearing." (*Id*., VII.C, p. 20). This latter provision should be limited to the conditions described in VII.B at p. 19.

33. The Disclosure Statement fails to provide adequate information regarding what it and the Plan refer to as the "Membership Interests" of the Debtor. (*See e.g*. Discl. Stmt., VI.B, p 10, defining proposed Class 9, and p. 14). That capitalized term does not appear to be defined anywhere in the Disclosure Statement and Plan, and should be. The creditors and parties in interest need and are entitled to know what/who comprises the "Membership Interests."

34. The Disclosure Statement fails to provide adequate information regarding the identity of the "Interest holders." The Disclosure Statement states that "[t]o the extent that the Interest holders have any unsecured claims, the Interest holders shall waive such claims and shall not receive any distributions on account of such claims." (Discl. Stmt., VI.C.5, p. 14). The Plan defines "Interest" as "an interest held by a creditor or by a holder of equity in the Debtor." (Plan, I, p. 6). The identity of each "Interest holder" should be disclosed in detail.

35. The Disclosure Statement fails to provide adequate information regarding the $90,000.00 per month "Monthly Accruals" that the Debtor proposes be paid to the Choctaw Investors (defined to be Trammel and the secured creditors, but see above regarding DuPree)

after the effective date for the purported purpose of financing post-confirmation operations of Choctaw. (Discl. Stmt., VI.C, p. 11; Plan I, p. 7). Specifically, the Disclosure Statement provides no details or discussion to substantiate why this $90,000 monthly amount is legitimately necessary. And, in this regard, it should be noted that the Debtor appears -- based on the amount of DIP financing obtained since the Petition Date -- to have operated on approximately $45,000 per month since the inception of the Bankruptcy Case. Absent more information on the proposed Monthly Accruals, and why they are needed in the amount proposed, creditors and parties in interest cannot make an informed judgment with respect to the Plan.

36. The Disclosure Statement fails to provide adequate information regarding Critical RF. The Disclosure Statement provides that "[i]n consideration of the general unsecured creditors agreement herein, the general unsecured creditors have a security interest in all assets of Critical RF, and in the Debtor's equity interest in Critical RF." (Discl. Stmt., VI.C.5, p. 14). The Disclosure Statement should provide more information and details regarding Critical RF, the business thereof, the assets thereof, the value of those assets, etc., and should also explain why the Debtor will retain its equity interest therein when all of its other property is proposed to be transferred to the Choctaw entities. Absent the disclosure of such information, creditors and parties in interest cannot make an informed judgment with respect to the Plan.

37. The Disclosure Statement fails to provide adequate information regarding the proposed employment of John Reardon by Choctaw. It states in part that ""Mr. Reardon will renegotiate his terms of continued employment with Choctaw." (Discl. Stmt., VI.D.4, p. 15). However, the terms of any such employment should be disclosed in the Disclosure Statement, so creditors and parties in interest can make an informed judgment with respect to the Plan.

38. The Disclosure Statement fails to provide adequate information regarding the proposed treatment of executory contracts and unexpired leases. Indeed, the information provided is ambiguous and inconsistent.

The Disclosure Statement first states that "unless otherwise provided in the Plan, confirmation of the Plan constitutes (A) an assumption of the Debtor's executory contracts and (B) a final order determining that the amount required to cure all defaults with respect to executory contracts *is $0.00*." (Discl. Stmt., VI.E, p. 18) (emphasis added). However, the Disclosure Statement then states that (i) "[a]ll executory contracts . . . that have not been previously rejected, or [that] are the subject of a pending motion to reject as of the Confirmation Hearing, shall be assumed by the Debtor and assigned to Choctaw as of the effective date," and (ii) that "[a]ny monetary amounts by which each executory contract and unexpired lease to be assumed pursuant to the Plan is in default shall be satisfied . . . *by payment of the amount necessary to cure such default* in cash on the effective date . . . ." (Discl. Stmt., VI.E.1-2, p. 18) (emphasis added). These ambiguities should be clarified, absent which the information provided in the Disclosure Statement in these regards is inadequate.

Further, and perhaps more significantly, the Disclosure Statement impermissibly fails to set forth information regarding the pending sale motions currently before the Court in connection with certain of the Debtor's APAs. Specifically, the Court entered Orders holding the sale motions involving DuQuesne Light Company and Encana Oil&Gas (USA) Inc., and the Objections of SkyTel and the Committee thereto, in abeyance, with the record to remain open pending certain further value-related proof discussed in the Orders. As stated in the Orders, the Debtor and SkyTel advised the Court that they would be undertaking discovery of a witness that the Debtor intended to call and attempt to qualify as an expert valuation witness, with the hearing

to be rescheduled once that discovery was concluded. *See* Dkt. #s 390, 391. The last time the parties discussed these pending motions with the Court in March, the Debtor represented that it was going to get proposed dates to SkyTel for the deposition of the Debtor's witness. SkyTel has not received any such dates from Debtor. The Disclosure Statement needs to provide information regarding these pending sale motions, including the Debtor's proposal regarding when the Debtor's witness can be deposed (unless the Debtor will no longer be attempting to offer a value expert, in which case the Debtor should say that) and when and how the Court is to consider and rule on the motions.

The Disclosure Statement should also (i) specifically identify the other executory contracts or unexpired leases that the Debtor wishes to assume or assume/assign pursuant to the Plan, and (ii) set forth and adequately explain the time at which and the process by which the Court is to hear the issues involved with the proposed assumption/assignment of such other executory contracts/unexpired leases, especially given that it has been established herein that, to the extent the contracts or leases involve APAs, which are in essence contracts for the sale of alleged assets of the Debtor, they cannot be assumed without the Court holding a hearing to consider and rule on whether the elements of 11 U.S.C. §363 have been satisfied.

The Disclosure Statement should also specifically identify the executory contracts or unexpired leases that the Debtor wishes to reject, and should provide detailed information regarding the anticipated amount of resulting rejection damages.

The Disclosure Statement should also provide adequate information regarding any of the cure expenses relating to any of the outstanding APAs that the Debtor seeks to assume, including but not limited to how any of the cure expenses will be paid.

39. The Disclosure Statement fails to provide adequate information regarding why no objections can be filed as to the Class 1 through 5 secured claims after confirmation. (See Discl. Stmt., VII.E, pp. 20-21). The creditors and parties in interest are entitled to more detailed information about why that is.

40. The Disclosure Statement fails to provide adequate information regarding the amount of funds that the Administrative Agent is to reserve for certain distributions. Specifically, the Disclosure Statement provides that the Administrative Agent shall "reserve fund adequate to properly treat contested claims pending the resolution of any objection to such claims." (Discl. Stmt., VII.E, p. 21). SkyTel, and the other creditors that might face an objection to their claim herein, are entitled to more information regarding how much in funds the Debtor thinks would be adequate for this purpose, and how much will actually be reserved. This is particularly true given that the Disclosure Statement and the Plan it describes provide that the Administrative Agent does not have to put up a bond, and also purport to provide for an extremely broad release of any liability on the part of that agent. If truly adequate funds are not reserved, contested claimants who prevail at the end of the day might be stuck without a remedy in the event the Disclosure Statement is approved, and the Plan confirmed, as is.

41. The Disclosure Statement fails to provide adequate information regarding this Court's retained jurisdiction post-confirmation. In fact, the Disclosure Statement completely fails to adequately address this issue, though it does appear to give *carte blanche* to many people/entities to act at their sole discretion, with purported broad releases from liability, without notice to creditors or orders from the Court, and with wholly inadequate Bankruptcy Court oversight. (*See e.g.* Discl. Stmt., VI.D.2, p. 14, and VI.D.5, pp. 15-17) (providing that the Court will not retain jurisdiction over Choctaw and Choctaw will not otherwise be subject to monitor

by the Bankruptcy Court[28], and discussing broad powers of undisclosed Administrative Agent to act, without bond, and without in many instances notice to creditors or orders from the Court).

42. The Disclosure Statement provides that "[n]o distribution shall be made . . . to an entity or transferee liable for recoverable property of an avoidable transfer." (Discl. Stmt., VII.E.4). The Disclosure Statement fails, however, to provide adequate information regarding who the Debtor believes to be liable for recoverable property of an avoidable transfer, and the basis for that belief. This information should be provided, especially given the complex nature of this relatively large case. Absent such information, the creditors and parties in interest cannot make an informed judgment with respect to the Plan.

43. The Disclosure Statement provides that numerous unspecified claims, causes of action, and the like are preserved and retained for enforcement by and for the benefit of the unsecured creditors. (Discl. Stmt., VII.F.1, p. 22). The Disclosure Statement fails, however, to disclose and explain what claims that fall under this provision exist (in the view of the Debtor). This information should be provided, or the creditors and parties in interest cannot make an informed judgment with respect to the Plan.

44. The Disclosure Statement fails to provide adequate information because it fails to include a sufficient "discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case." *See* 11 U.S.C. § 1125(a). This is an express requirement of the Bankruptcy Code. As such, this Court should refuse to approve the Disclosure Statement on this grounds alone.

[28] This is *ludicrous* given that the proposed Plan provides for Choctaw -- i.e., Trammel and the secured creditors -- to obtain essentially all of the Debtor's assets for consideration that is MUCH, MUCH less than the value of the subject Licenses, particularly in the event that the Debtor obtains *Second Thursday* relief.

45. In addition to the above, the Disclosure Statement should be denied because the Debtor is delinquent in the filing of monthly operating reports and, as a result, creditors and parties in interest lack a proper basis for comparing the information set forth in the Disclosure Statement with the most current information required to be reported in the operating reports.

46. For all the reasons discussed above, the Disclosure Statement fails to provide information sufficient to allow a creditor, much less a hypothetical investor, to make an informed judgment concerning the Plan. Accordingly, the Disclosure Statement should not be approved.

47. Other possible grounds to be set forth at the hearing on the Disclosure Statement.

B. The Disclosure Statement Should Not be Approved Because the Proposed Plan Described Therein is Facially Unconfirmable as a Matter of Law.

48. As set forth above, a bankruptcy court may address confirmation issues at a hearing on the disclosure statement when the plan is so fatally and obviously flawed that it cannot be confirmed. *In re Bjolmes Realty Trust*, 134 B.R. 1000 (Bankr. D. Mass. 1991). Further, if a plan of reorganization described in a disclosure statement is facially unconfirmable as a matter of law, the court is authorized to deny approval of the disclosure statement. *In re Monroe Well Serv.*, 80 B.R. at 332; *In re Ginger Ella*, 148 B.R. 157; *In re Dakota Rail*, 104 B.R. at 143); *In re Pecht*, 57 B.R. at 139; *In re Kehn Ranches*, 41 B.R. 832. Addressing these issues in conjunction with the Disclosure Statement hearing, especially in a relatively complex case such as this one, has the added benefit of conserving the valuable resources and time of this Court, the creditors and other parties in interest, and the estate.

49. The Disclosure Statement and the Plan it describes provide for the Debtor to receive a discharge upon confirmation of the Plan. (*See e.g*. Discl. Stmt., VII.G.3, p. 23). This is contrary to the Bankruptcy Code's denial of discharges for corporate debtors pursuing liquidation in a chapter 11 plan. *See* 11 U.S.C. § 1141(d)(3). Section 1141(d)(3) provides:

> (3) The confirmation of a plan does not discharge a debtor if --
> (A) the plan provides for the liquidation of all or substantially all of the property of the estate;
> (B) the debtor does not engage in business after consummation of the plan; and
> (C) the debtor would be denied a discharge under section § 727(a) of this Title if the case were a case under chapter 7 of this title.

The Disclosure Statement asserts that the Plan is intended to "efficiently and quickly liquidate Debtor's assets… ." (Discl. Stmt., IV, p. 7). The Disclosure Statement further represents that "the Debtor will wind down its business upon confirmation" of the Plan. (*Id*., V.A, p. 7). Finally, the Debtor is not an individual, so it would be denied a discharge under § 727(A) if this case was proceeding under chapter 7 of the Code. Accordingly, the Disclosure Statement should not be approved because it describes a Plan that is facially unconfirmable as a matter of law.

50. In order for a plan to be confirmable, each holder of a claim in each impaired class of claims must either (i) accept the plan, or (ii) receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain in a straight liquidation. *See* 11 U.S.C. § 1129(a)(7); *see generally In re Cassis Bistro, Inc*., 188 B.R. 472, 475 (Bankr. S.D. Fla. 1995); *In re Tranel*, 940 F.2d 1168 (8th Cir. 1991).

As discussed above, the Disclosure Statement simply states that the Debtor "believes" that the Plan meets the test because (i) "the Plan proposes to pay all allowed claims in full," and (ii) "it is 'doubtful' that a Chapter 7 trustee would be able to liquidate the FCC Spectrum Licenses in such a manner and at such a price as to pay all allowed claims in full" because of the "highly specialized nature" of those licenses. (Discl. Stmt., V.C, p. 8). These statements are inaccurate, misleading, and inadequate for the reasons previously set forth.

In addition, the Debtor does not even attempt in its proposed Plan to set forth a detailed liquidation analysis (to include information regarding how much creditors would receive in a Chapter 7 liquidation) or a discussion of why Choctaw will be able to market and sale the Licenses for a higher amount than a Chapter 7 trustee. Rather, the Plan simply asserts that this "Best Interest of Creditors" test is met. (Plan, IV.B.1, pp. 24-25). This is improper given the size and relative complexity of this case. Accordingly, the Disclosure Statement should not be approved because it describes a Plan that is facially unconfirmable as a matter of law.

51. Other aspects of the Disclosure Statement also point to a plan that may be unconfirmable on its face. Indeed, as discussed in more detail in Paragraph No. 28 above, while it is not perfectly clear, the Disclosure Statement arguably describes a scenario whereby SkyTel's claims in, to, and in connection with the Licenses, and all related encumbrances created thereby, as well as SkyTel's claims asserted in the New Jersey Litigation, are "laundered" through the proposed Plan and disappear for good, even if (i) the FCC does not ultimately grant *Second Thursday* relief or approve the transfer of those Licenses to Choctaw (such that the Licenses ultimately revert back to the Debtor, subject only to the secured creditor's liens, and not, arguably, the liens/claims/encumbrances of everyone else), (ii) the FCC ultimately rules in SkyTel's favor in connection with its pending Application for Review, and (iii) the New Jersey District Court ultimately rules in SkyTel's favor in the New Jersey Litigation.

To the extent, if any, that the proposed Plan is attempting to do this, that would be inconsistent with this Court's order lifting the stay to allow the New Jersey Litigation to proceed, and with the statements this Court has made throughout the course of the Bankruptcy Case regarding its intended role vis-à-vis the FCC. In that event, the Plan would be unconfirmable on

its fact as having been proposed in bad faith, for the primary purpose of denying one creditor -- SkyTel -- of its rights in the FCC proceedings and in the New Jersey Litigation.

52. Further, the Disclosure Statement and the proposed Plan it describes propose to grant extremely broad releases to various non-Debtor parties (including but not necessarily limited to Choctaw, Holding, Choctaw Investors, and the Administrative Agent), with the exception of, in certain instances, liability related to willful misconduct or violations of federal securities law.

SkyTel's rights vis-à-vis these non-Debtor entities cannot be released or discharged through a plan of reorganization without SkyTel's consent. Indeed, such third-party releases are impermissible as a matter of law.

Section 524(e) of the Bankruptcy Code provides that the discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt. That section has been interpreted to prevent bankruptcy courts from using §105 to effectuate the release of third-party claims. "A §105 injunction cannot alter another provision of the code." *Matter of Zale*, 62 F.3d 746, 760 (5th Cir. 1995). "Section 524 prohibits the discharge of debts of non-debtors. Accordingly, we must overturn a §105 injunction if it effectively discharges a non-debtor." *Id.* (citations omitted). Therefore, such an injunction, *or equivalent involuntary release*, exceeds a bankruptcy court's powers under §105. *Id.* at 761 (emphasis added); *accord In re Continental Airlines*, 203 F.3d 203, 211-17 (3rd Cir. 2000) (collecting cases).

Indeed, the Fifth Circuit has plainly stated: "In a variety of contexts, this court has held that Section 524(e) only releases the debtor, not co-liable third parties. *These cases seem broadly to foreclose non-consensual non-debtor releases and permanent injunction*s." *In re Pac. Lumber*

Co., 584 F.3d 229, 252 (5th Cir. 2009) (emphasis added); s*ee also In re Coho Res., Inc*., 345 F.3d 338, 342 (5th Cir. 2003); *Hall v. Nat'l Gypsum Co*., 105 F.3d 225, 229 (5th Cir. 1997); *Matter of Edgeworth*, 993 F.2d 51, 53-54 (5th Cir. 1993); *In re Applewood Chair*, 203 F.3d 914, 918 (5th Cir. 2000); *Matter of Sandy Ridge*, 881 F.2d 1346, 1351 (5th Cir. 1989).

Accordingly, the Disclosure Statement should not be approved, and the Plan cannot be confirmed, if same operate to, or have the effect of, impairing the legal or equitable rights of SkyTel, if any, with respect to the claims proposed to be released.

53. Similarly, the Disclosure Statement describes a proposed Plan pursuant to which Choctaw, Holding, and Choctaw Investors purportedly have no liability to any creditor or other party should they fail to obtain FCC approval of the transfer of the Licenses for any reason, *including* their own refusal to request such approval at their sole and absolute discretion. (Discl. Stmt., VII.D.4, p. 20). Such a provision is entirely too broad under the facts of this case, is indicative of bad faith, and renders the Plan facially unconfirmable.

54. The Disclosure Statement also describes a proposed Plan that is unconfirmable as a matter of law to the extent the definition of "Allowed Claim" excludes any amount for punitive damages or penalties. (Plan, I, pp. 2-3).

55. Finally, the Disclosure Statement describes a proposed Plan that is unconfirmable as a matter of law to the extent the Debtor is seeking to assume executory contracts or unexpired lease involving agreements for the sale or transfer of any of the Licenses, without the Court first determining whether the subject assets are in fact property of the estate, in light of the pending FCC proceedings related to determining what, if any, interest the Debtor has or may have in those assets, or otherwise. In this regard, SkyTel incorporates by reference its objections to the prior sale motions heard by the Court.

56. As discussed above, the Plan as described in the Disclosure Statement does not comply with all provisions of the Bankruptcy Code, and is facially unconfirmable. Consequently, the Debtor's accompanying Disclosure Statement should not be approved.

57. Other possible grounds to be set forth at the hearing on the Disclosure Statement.

WHEREFORE, PREMISES CONSIDERED, for the above stated reasons, and for possible other reasons to be stated at the hearing on the Disclosure Statement, SkyTel respectfully requests that this Court enter an Order denying approval of the Disclosure Statement in its entirety. SkyTel further prays for general relief.

THIS the 6th day of June, 2012.

Respectfully submitted,

WARREN HAVENS, SKYBRIDGE SPECTRUM FOUNDATION, VERDE SYSTEMS LLC, ENVIRONMENTAL LLC, INTELLIGENT TRANSPORTATION & MONITORING LLC, and TELESAURUS HOLDINGS GB LLC

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing to be filed via the Court's Electronic Case Filing System, which caused a copy to be served on all counsel and parties of record who have consented to receive ECF notification, including the following:

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THIS the 6th day of June, 2012.

/s/ William H. Leech
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